

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1312 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
  2. To be referred to the Reporter or not? Yes
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
  5. Whether it is to be circulated to the Civil Judge? No :

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FULABEN WD/O CHUNILAL N

Versus

GANESHBHAI PUNABHAI CHANAWALA  
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Appearance:

MR NK MAJMUDAR for Petitioners  
MR JV DESAI for Respondent No. 1  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is landlord's Revision under Section 29(2) of the Bombay Rent Act, against concurrent judgments and Decrees of the trial Court as well as the Appellate Court.

2. The Revision arises out of the following facts :

Super structure locally known as "IMLA" standing over the City Survey No.3068 situated in Fata Talav area, Bharuch city, was let out by the father of the plaintiffs No.2 to 6 and husband of plaintiff No.1 to the defendant on monthly rent of Rs.5/-. The tenancy commenced on 7.11.1965. It was alleged that the defendant admitted to be tenant of the plaintiffs till 8.6.1970 and thereafter he started acting as if he is not the tenant in the Suit premises and the plaintiffs are not the owners of the suit premises, he started denying the title of the plaintiff in respect of the Suit premises. Consequently the Suit for eviction of the defendant was filed by the plaintiffs - revisionists on the ground of disclaimer of title.

3. The defendant in his written statement denied the allegations made by the plaintiffs. It was pleaded that when new survey had taken place in Bharuch the Suit premises was entered in the name of the defendant. The defendant had spent huge amount on the suit premises and therefore he thought that because of the same the Suit premises was entered in his name and he became its owner. He, therefore, gave application in this behalf and as such he stated that the suit premises was entered in his name and he became owner thereof. It was clarified in the written statement that in doing so there was no intention of the defendant to deny the title of the plaintiff in respect of the suit premises.

4. The trial Court from the evidence on record found that there was no disclaimer of title of the landlord by the tenant. Accordingly the Suit was dismissed. This was the only ground on which the decree for eviction was sought by the plaintiffs - revisionists.

5. An Appeal was preferred by the landlords which too was dismissed. It is, therefore, this Revision.

6. Shri N.K.Majmudar, learned Counsel for the revisionists and Shri J.V.Desai, learned Counsel for the respondent have been heard.

7. Shri Desai for the respondent raised a preliminary objection that since there is no provision for seeking eviction under the Bombay Rent Act on ground of disclaimer of title either under Section 12 or under Section 13 thereof the Suit in the Rent Court was incompetent and as such the revision is also incompetent

and the two courts below were justified in dismissing the Suit. It seems that this objection was not taken in the Courts below. In reply to this preliminary objection Shri Majmudar, learned Counsel for the revisionist has cited Division Bench pronouncement of this Court in Nanduben Dayalji v/s. Bhatiya Ranchhoddas reported in 18 GLR 140, where the Division Bench while taking notice of the provision of Section 111(g) of the Transefer of Property Act and Section 116 of the Evidence Act observed that once the tenant denies the relationship of landlord and tenant and also denies the title of his landlord who demised the premises to him and also set up title in the demised property either in himself or in third person the landlord is entitled to a Decree for eviction and the Rent Court has jurisdiction to hear and decide the Suit. Thus, the preliminary objection in view of this Division Bench pronouncement of this Court cannot be sustained.

8. Coming to the merits of the revision it is a case of concurrent finding of fact recorded by the two courts below, hence the revisional interference is hardly needed. However, Shri N.K.Majmudar has straneously argued that the judgments of the two courts below are perverse inasmuch as the documentary evidence has not been correctly interpreted. According to him, wrong interpretation of document amounts to material irregularity which calls for interference in revision no matter it is a revision under Section 29(2) of the Bombay Rent Act. He further argued that the evidence on record clearly shows that it was a clear case of denial of title of landlord by the tenant hence the decree for eviction should have been passed by the Courts below.

9. After hearing Shri Majmudar it is felt that he has tried to urge that the premises in question was not a temporary super-structure locally known as "IMLA", but it also included the land over which it was built and since the defendant tenant approached the City Survey Office and got his name entered over "IMLA" as owner it amounted to disclaimer of title by the tenant and as such the Decree for eviction should have been passed by the Courts below. The argument apparently sounds well, but does not stand scrutiny. If the written statement of the tenant is taken into consideration so also the findings of the court below it appears that in the year 1970 in the earth-quake the old Imla which was let out to the defendant had collapsed. It was found from the evidence by the Courts below that the collapsed Imla was not repaired by the landlord, rather it was repaired by the tenant at his own expense and cost. In the written statement there is clear pleading that the tenant never

disowned or disclaimed the title of the landlord. Even in the plaint the allegation was that the defendant gave document to the plaintiff admitting that he is tenant of the plaintiffs in the Suit premises. It is also alleged in the plaint that in Regular Civil Appeal No.7 of 1970 there was compromise on the basis of which compromise decree was passed against the defendant and in that Appeal it was decided that the defendant was tenant in the suit premises. Thus, the relationship of the landlord and tenant, even according to the plaintiff, was admitted by the defendant. The Appellate Court has considered the evidence on record and also judgment of the trial Court on this point and observed that the trial Court has rightly concluded that there was relationship of landlord and tenant between the parties. This conclusion was arrived at by the Courts below upon considering the documentary evidence, namely, Ex.23 to 29 and 31. These documents were produced by the plaintiffs themselves. There was thus over-whelming evidence to conclude that the relationship of landlord and tenant between the parties was established. It is also concurrent findings of the two courts below that the tenant has never denied the existence of relationship of landlord and tenant between the parties. On the other hand Ramlal Chunilal, plaintiff No.5 has admitted that the old Imla had fallen in the earth-quake in 1970. He further admitted that he was collecting the rent of Imla which has collapsed even after the year 1970. He further admitted that the Imla was repaired by the defendant by spending his own money. It is thus clear that even after the old Imla collapsed in the year 1970 one of the plaintiffs went on collecting the rent from the defendant. Consequently it was difficult to believe that the defendant ever disputed relationship of the landlord - tenant between the parties and ever disputed title of the plaintiffs in the suit premises. From the evidence on record it further appears that the defendant never alleged that he is owner of the land of Survey No.3068 over which the Imla exists. On the other hand under the belief that the collapsed imla was got repaired by the defendant at his own cost and expense that he made a statement before the City Survey Officer that he is owner of the Imla, namely, of the super-structure. The certified copy of order of the Deputy Collector in CTS Appeal No.9/82, Ex.30, was on record. The plaintiff relied upon this document in support of his case. The lower Appellate Court has rightly observed that it cannot be inferred from the said order that the defendant disclaimed the title of the plaintiff in respect of the Suit premises. It is also clear from the written statement that the defendant never disclaimed the title

of the plaintiff in the suit property or in the land over which Imla exists. The entry in the city survey record was made in the year 1976 when the City Survey took place in Bharuch. Merely because the name of the defendant was entered in the City Survey record it cannot be said that he disclaimed the title of the plaintiffs. The lower Appellate Court also considered the certified copy of statement of the defendant Ex.25 given before the City Survey Officer wherein he admitted that he was a tenant in the suit premises and the plaintiffs were his landlords. He further stated in Ex.25 that he had no property of his own in Bharuch. In these circumstances if the lower Appellate Court read Exs.25 and 30 together and came to the conclusion that it was not a case of disclaimer of title by the tenant it cannot be said that the lower Appellate Court committed any irregularity or material irregularity or illegality in returning such finding.

10. It would be significant to mention that at no point of time notice was given to the defendant asking for payment of rent. The defendant also likewise did not write at any point of time to the plaintiff that the plaintiff is not the owner or landlord. Consequently if on such evidence and pleadings the Courts below concluded that it was not a case of disclaimer of title the said conclusion cannot be said to be illegal. As such no interference in this revision is called for.

11. I do not find any merit in this revision which is hereby dismissed with no order as to costs.

sd/-

Date : July 07, 2000 ( D. C. Srivastava, J. )

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